

# Senate Study Bill 1169

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
BUSINESS AND LABOR RELATIONS  
BILL BY CO=CHAIRPERSON DEARDEN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act establishing a general prevailing rate of hourly wages  
2 requirement for public works project employees based on wages  
3 paid for work of a similar character in the locality in which  
4 the work is performed, and providing penalties.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 2209SC 81  
7 kh/sh/8

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1 1 Section 1. Section 84A.5, subsection 3, Code 2005, is  
1 2 amended to read as follows:  
1 3 3. The division of labor services is responsible for the  
1 4 administration of the laws of this state under chapters 88,  
1 5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,  
1 6 and 94A, and sections 30.7 and 85.68. The executive head of  
1 7 the division is the labor commissioner, appointed pursuant to  
1 8 section 91.2.  
1 9 Sec. 2. NEW SECTION. 91F.1 SHORT TITLE.  
1 10 This chapter shall be known and may be cited as the  
1 11 "Prevailing Wage Act".  
1 12 Sec. 3. NEW SECTION. 91F.2 PUBLIC POLICY.  
1 13 It is the policy of this state that a wage of not less than  
1 14 the general prevailing rate of hourly wages paid for work of a  
1 15 similar character in the locality in which the work is  
1 16 performed shall be paid to all laborers, workers, and  
1 17 mechanics employed by or on behalf of any and all public  
1 18 bodies engaged in the construction of public works.  
1 19 Sec. 4. NEW SECTION. 91F.3 DEFINITIONS.  
1 20 As used in this chapter, unless the context otherwise  
1 21 requires:  
1 22 1. "Construction" means all work on public works involving  
1 23 laborers, workers, or mechanics.  
1 24 2. "General prevailing rate of hourly wages", "general  
1 25 prevailing rate of wages", or "prevailing rate of wages" means  
1 26 the hourly cash wages plus fringe benefits for training and  
1 27 apprenticeship programs approved by the bureau of  
1 28 apprenticeship and training of the United States department of  
1 29 labor, health and welfare, insurance, vacations, and pensions  
1 30 paid generally, in the locality in which the work is being  
1 31 performed, to employees engaged in work of a similar character  
1 32 on public works.  
1 33 3. "Locality" means the county where the physical work  
1 34 upon public works is performed, except as follows:  
1 35 a. If there is not available in the county a sufficient  
2 1 number of competent skilled laborers, workers, and mechanics  
2 2 to construct the public works efficiently and properly,  
2 3 "locality" includes any other county nearest the one in which  
2 4 the work or construction is to be performed and from which  
2 5 such persons may be obtained in sufficient numbers to perform  
2 6 the work.  
2 7 b. With respect to contracts for highway work and the  
2 8 state department of transportation, "locality" may, at the  
2 9 discretion of the director of the department of  
2 10 transportation, be construed to include two or more adjacent  
2 11 counties from which workers may be accessible for work on such  
2 12 construction.  
2 13 4. "Public body" means the state or any officer, board, or  
2 14 commission of the state or any political subdivision or

2 15 department of a political subdivision, or any institution  
2 16 supported in whole or in part by public funds, and includes  
2 17 every county, city, township, school corporation, municipal  
2 18 corporation, commission, irrigation, utility, reclamation,  
2 19 improvement, or other district, and every other political  
2 20 subdivision, district, or municipality of the state, whether  
2 21 such political subdivision, municipality, or district operates  
2 22 under a special charter or not.

2 23 5. "Public works" means all fixed works constructed by any  
2 24 public body, other than work done directly by any public  
2 25 utility company, whether or not constructed under public  
2 26 supervision or direction, or paid for wholly or in part out of  
2 27 public funds.

2 28 Sec. 5. NEW SECTION. 91F.4 ADMINISTRATION.

2 29 The labor commissioner, appointed pursuant to section 91.2,  
2 30 and the division of labor services of the department of  
2 31 workforce development created in section 84A.1 shall  
2 32 administer this chapter. The labor commissioner may adopt  
2 33 rules for the administration of this chapter as provided in  
2 34 section 91.6.

2 35 Sec. 6. NEW SECTION. 91F.5 PREVAILING WAGE REQUIREMENTS.

3 1 All laborers, workers, and mechanics employed by or on  
3 2 behalf of any public body engaged in the construction of  
3 3 public works shall be paid a wage that is not less than the  
3 4 general prevailing rate of hourly wages for work of a similar  
3 5 character on public works in the locality in which the work is  
3 6 performed, and not less than the general prevailing rate of  
3 7 hourly wages for legal holiday and overtime work. Only  
3 8 laborers, workers, and mechanics directly employed by  
3 9 contractors or subcontractors in actual construction work on  
3 10 the site of the building or construction job, and laborers,  
3 11 workers, and mechanics engaged in the transportation of  
3 12 materials and equipment to or from the site, but not including  
3 13 the transportation by the sellers and suppliers or the  
3 14 manufacture or processing of materials or equipment, in the  
3 15 execution of any contract or contracts for public works with  
3 16 any public body shall be deemed to be employed upon public  
3 17 works. The wage for a tradesperson performing maintenance is  
3 18 equivalent to that of a tradesperson engaged in construction.

3 19 Sec. 7. NEW SECTION. 91F.6 DUTIES AND RESPONSIBILITIES.

3 20 1. The public body awarding any contract for public works  
3 21 or otherwise undertaking any public works shall ascertain the  
3 22 general prevailing rate of hourly wages, in the locality in  
3 23 which the work is to be performed, for each craft or type of  
3 24 worker or mechanic needed to execute the contract. If the  
3 25 public body performs the work without letting a contract for  
3 26 the work, the public body shall ascertain the prevailing rate  
3 27 of wages on a per hour basis in the locality. The public body  
3 28 shall specify in the resolution or ordinance and in the call  
3 29 for bids for the contract that the general prevailing rate of  
3 30 wages in the locality for each craft or type of worker or  
3 31 mechanic needed to execute the contract or perform the work,  
3 32 as well as the general prevailing rate for legal holiday and  
3 33 overtime work, as ascertained by the public body or by the  
3 34 department, shall be paid for each craft or type of worker  
3 35 needed to execute the contract or to perform the work, and  
4 1 that it shall be mandatory upon the contractor to whom the  
4 2 contract is awarded, upon any subcontractor hired by the  
4 3 contractor, and upon the public body if the public body  
4 4 performs the work, to pay not less than the specified rates to  
4 5 all laborers, workers, and mechanics employed in the execution  
4 6 of the contract or the work.

4 7 2. If the public body desires that the labor commissioner  
4 8 ascertain the prevailing rate of wages, the public body shall  
4 9 notify the labor commissioner in writing, and the labor  
4 10 commissioner shall ascertain the prevailing rate of wages in  
4 11 the locality in which the work is to be performed, for each  
4 12 craft or type of worker or mechanic needed to execute a  
4 13 contract or project of work upon the request of any public  
4 14 body, and shall certify the prevailing rate of wages to the  
4 15 public body within a reasonable time after receiving the  
4 16 request. A public body that receives certification of the  
4 17 prevailing rate of wages as provided in this subsection shall  
4 18 cause to be inserted in the contract awarded pursuant to  
4 19 subsection 1 a stipulation to the effect that not less than  
4 20 the prevailing rate of wages as determined by the public body  
4 21 or the labor commissioner or determined by the court on review  
4 22 shall be paid to all laborers, workers, and mechanics  
4 23 performing work under the contract. If the labor commissioner  
4 24 revises the prevailing rate of wages to be paid by the public  
4 25 body, the revised rate shall apply to the contract, and the

4 26 public body shall be responsible to notify the contractor and  
4 27 each subcontractor of the revised rate.

4 28 3. The public body shall require that the contractor  
4 29 include, in all of the contractor's bonds, such provision as  
4 30 will guarantee the faithful performance of the prevailing wage  
4 31 clause as provided by contract. The public body shall also  
4 32 require that the contractor and each subcontractor insert in  
4 33 each subcontract and lower-tiered subcontract and in the  
4 34 project specifications for each subcontract and lower-tiered  
4 35 subcontract a written stipulation to the effect that not less  
5 1 than the prevailing rate of wages shall be paid to all  
5 2 laborers, workers, and mechanics performing work under the  
5 3 contract. A contractor or subcontractor who fails to comply  
5 4 with this subsection is in violation of this chapter.

5 5 4. All bid specifications shall list the specified rates  
5 6 to all laborers, workers, and mechanics in the locality for  
5 7 each craft or type of worker or mechanic needed to execute the  
5 8 contract.

5 9 5. The contractor to whom a contract for public works is  
5 10 awarded or the construction manager in charge of the project  
5 11 shall post, at a location on the project site of the public  
5 12 works that is easily accessible to the workers engaged on the  
5 13 project, the prevailing rate of wages for each craft or type  
5 14 of worker or mechanic needed to execute the contract or  
5 15 project or work to be performed. Failure to post a prevailing  
5 16 rate of wages as required by this section is a violation of  
5 17 this chapter.

5 18 6. A person may apply to the labor commissioner for a  
5 19 hearing on the issue of establishing a new prevailing wage  
5 20 classification for a particular craft or type of worker. Two  
5 21 or more such requests may be consolidated in a single hearing  
5 22 before the labor commissioner. Such consolidation shall occur  
5 23 whether each separate hearing is conducted by a public body or  
5 24 by the labor commissioner. The person applying for a  
5 25 consolidated hearing shall have the burden of establishing  
5 26 that there is no existing prevailing wage classification for  
5 27 the particular craft or type of worker in any of the  
5 28 localities under consideration.

5 29 7. If the public body authorizing the work or the labor  
5 30 commissioner is unable to ascertain the prevailing rate of  
5 31 wages for any class of work required to be performed under the  
5 32 proposed contract, it shall be the duty of the labor  
5 33 commissioner, where the determination of the prevailing rate  
5 34 of wages has been referred to the labor commissioner under  
5 35 subsection 2, to so notify the public body authorizing the  
6 1 proposed work, and it shall be the duty of the public body in  
6 2 either case to state the fact of inability to ascertain the  
6 3 prevailing rate of wages in its resolution, ordinance, or  
6 4 notice for bids, in which event the clause specifying the  
6 5 prevailing wage as to such class of work may be excluded from  
6 6 the contract unless the prevailing wage for such class of work  
6 7 may be determined by the district court as provided in this  
6 8 chapter.

6 9 8. The finding of the public body awarding the contract or  
6 10 authorizing the work, or the labor commissioner if the labor  
6 11 commissioner certified the prevailing wage upon the public  
6 12 body's requests as provided in subsection 2, shall be final  
6 13 for all purposes of the contract for public works then being  
6 14 considered, unless reviewed by the district court under the  
6 15 provisions of this chapter.

6 16 9. Nothing in this chapter shall be construed to prohibit  
6 17 the payment to any laborer, worker, or mechanic employed on  
6 18 any public works, of more than the prevailing rate of wages;  
6 19 or to limit the hours of work which may be performed by any  
6 20 person in any particular period of time.

6 21 Sec. 8. NEW SECTION. 91F.7 RECORDS REQUIRED.

6 22 The contractor and each subcontractor used in the  
6 23 fulfillment of a written contract relating to a public works  
6 24 project or officer of the public body in charge of a public  
6 25 works project shall maintain and keep, for a period of not  
6 26 less than three years, true and accurate records of the name,  
6 27 address, telephone number when available, social security  
6 28 number, and occupation of all laborers, workers, and mechanics  
6 29 employed on the public works project by the contractor and  
6 30 subcontractor or officer of the public body. The records  
6 31 shall also show the actual hourly wages paid in each pay  
6 32 period to each employee and the hours worked each day in each  
6 33 work week by each employee. While participating on public  
6 34 works, each contractor's payroll records shall include the  
6 35 starting and ending times of work for each employee. The  
7 1 record shall be open at all reasonable hours to the inspection

7 2 of the public body awarding the contract, its officers and  
7 3 agents, and to the labor commissioner or the labor  
7 4 commissioner's designee. Any contractor or subcontractor  
7 5 whose principal place of business is in a state other than  
7 6 Iowa shall make the required records or accurate copies of the  
7 7 records available within this state at all reasonable hours  
7 8 for inspection.

7 9 Sec. 9. NEW SECTION. 91F.8 PENALTY == ATTORNEY GENERAL  
7 10 AND COUNTY ATTORNEY.

7 11 1. Any officer, agent, or representative of any public  
7 12 body who willfully violates, or fails to comply with, any of  
7 13 the provisions of this chapter, and any contractor awarded a  
7 14 contract for a public works project or subcontractor used in  
7 15 the fulfillment of a written contract relating to a public  
7 16 works project under this chapter, who neglects to keep, or  
7 17 cause to be kept, accurate records of the names, occupations,  
7 18 and actual wages paid to each laborer, worker, and mechanic  
7 19 employed by the contractor or subcontractor, in connection  
7 20 with the public works project, or who refuses to allow access  
7 21 to the records or copies of the records at all reasonable  
7 22 hours as required under this chapter, is guilty of a serious  
7 23 misdemeanor.

7 24 2. The attorney general shall assist the labor  
7 25 commissioner in enforcing this chapter. The labor  
7 26 commissioner or the attorney general may commence legal  
7 27 proceedings in district court to enforce a provision of this  
7 28 chapter. If the attorney general assists the labor  
7 29 commissioner under this section, the attorney general may  
7 30 commence the legal proceedings at the request of the labor  
7 31 commissioner or upon the attorney general's own initiative on  
7 32 behalf of the state, but the county attorney, at the request  
7 33 of the attorney general, shall appear and prosecute such  
7 34 action when brought in the county attorney's county.

7 35 Sec. 10. NEW SECTION. 91F.9 INVESTIGATION == POSTING  
8 1 REQUIREMENTS.

8 2 1. To effectuate the purpose and policy of this chapter,  
8 3 each public body shall, during the month of June annually,  
8 4 investigate and ascertain the prevailing rate of wages as  
8 5 defined in this chapter and shall publicly post or keep  
8 6 available for inspection by any interested party in the  
8 7 principal public office building of such public body, its  
8 8 determination of such prevailing rate of wages and shall  
8 9 promptly file, not later than July 15 annually, a certified  
8 10 copy of its determination in the office of the secretary of  
8 11 state and the office of the labor commissioner. The public  
8 12 body's determination of such prevailing rate of wages shall be  
8 13 a public record as defined in chapter 22.

8 14 2. The labor commissioner shall, during the month of June  
8 15 annually, investigate and ascertain the prevailing rate of  
8 16 wages for each county in the state. If a public body fails to  
8 17 investigate and ascertain the prevailing rate of wages as  
8 18 required in subsection 1, the prevailing rate of wages for  
8 19 that public body shall be the rate as determined by the labor  
8 20 commissioner under this subsection for the county in which the  
8 21 public body is located.

8 22 3. If the labor commissioner ascertains the prevailing  
8 23 rate of wages, the labor commissioner shall, within thirty  
8 24 days after receiving a notice from the public body authorizing  
8 25 the proposed work, conduct an investigation to ascertain the  
8 26 prevailing rate of wages as defined in this chapter and such  
8 27 investigation shall be conducted in the locality in which the  
8 28 work is to be performed. The labor commissioner shall send a  
8 29 certified copy of its findings to the public body authorizing  
8 30 the work, shall keep a record of its findings available for  
8 31 public inspection in the labor commissioner's office, and  
8 32 shall publish on its official web site its findings and the  
8 33 determinations submitted to the commissioner pursuant to  
8 34 subsection 1. The determinations submitted to the labor  
8 35 commissioner pursuant to subsection 1 and the record of the  
9 1 labor commissioner's findings shall be public records as  
9 2 defined in chapter 22.

9 3 4. The public body, except for the state department of  
9 4 transportation with respect to highway contracts, or the labor  
9 5 commissioner if the labor commissioner ascertains the  
9 6 prevailing rate of wages as provided in subsection 3, shall  
9 7 publish, within thirty days of making a determination as  
9 8 provided in subsection 1 or 3, in a newspaper of general  
9 9 circulation within the area, a notice of the determination and  
9 10 that the determination is effective, and shall promptly mail a  
9 11 copy of its determination to any employer, any association of  
9 12 employers, and any person or association of employees who have

9 13 filed their names and addresses with the public body or labor  
9 14 commissioner, requesting copies of any determination stating  
9 15 the particular rates and the particular class of workers whose  
9 16 wages will be affected by such rates.

9 17 5. At any time within thirty days after the labor  
9 18 commissioner has published a prevailing wage schedule on the  
9 19 commissioner's official web page, any person affected may  
9 20 object to a determination in writing to the public body  
9 21 stating the specific grounds of the objection. The public  
9 22 body shall set a date for a hearing on the objection after  
9 23 giving written notice, stating the time and place of the  
9 24 hearing, to the objector at least ten days before the date of  
9 25 the hearing. The hearing shall be held not later than forty=  
9 26 five days after the objection is filed and shall not be  
9 27 postponed or reset for a later date except upon the consent,  
9 28 in writing, of the objector and the public body. If the  
9 29 public body receives more than one written objection at a  
9 30 given time, the public body may in its discretion hear each  
9 31 written objection filed separately or may consolidate for  
9 32 hearing two or more written objections filed with the public  
9 33 body. At the hearing the public body and the objector may  
9 34 introduce any evidence material to the issue, and the public  
9 35 body shall introduce in evidence the investigation it  
10 1 conducted or instituted that formed the basis of its  
10 2 determination. The public body shall make its final decision  
10 3 on the written objection within thirty days after the  
10 4 conclusion of the hearing, and shall promptly file a certified  
10 5 copy of its final determination with the secretary of state  
10 6 and shall provide a copy of its final determination by  
10 7 registered mail to all parties to the proceedings. If  
10 8 judicial proceedings to review the final determination of the  
10 9 public body are not instituted as provided in this chapter,  
10 10 the determination shall be final and binding.

10 11 6. If the public body conducting the hearing is a state  
10 12 agency, the state agency shall give notice, conduct hearings,  
10 13 and allow appeals in conformity with chapter 17A.  
10 14 Notwithstanding chapter 17A, petitions for judicial review may  
10 15 be filed in the district court of the county in which the  
10 16 public body is located or the final determination was made.

10 17 7. If the public body is other than an agency subject to  
10 18 chapter 17A, the presiding officer of the public body, or the  
10 19 presiding officer's authorized representative, may interview  
10 20 workers, administer oaths, take or cause to be taken the  
10 21 depositions of witnesses, certify to all official acts, and  
10 22 require by subpoena the attendance and testimony of witnesses,  
10 23 and the production of all books, records, and other evidence  
10 24 relative to the matter under investigation or hearing. The  
10 25 subpoena shall be signed and issued by such presiding officer  
10 26 or the presiding officer's authorized representative. Every  
10 27 contractor or subcontractor who employs workers in the  
10 28 contested case shall furnish to the presiding officer of the  
10 29 public body, or the presiding officer's authorized  
10 30 representative, on demand, a sworn statement of the accuracy  
10 31 of the records submitted by the contractor or subcontractor.  
10 32 A contractor or subcontractor who refuses to furnish a sworn  
10 33 statement of the records is in violation of this chapter.

10 34 In the case of failure of any person to comply with any  
10 35 subpoena lawfully issued under this section or on the refusal  
11 1 of any witness to produce evidence or to testify to any matter  
11 2 regarding which the person may be lawfully interrogated, it is  
11 3 the duty of the court, upon application of such presiding  
11 4 officer or the presiding officer's authorized representative,  
11 5 to compel obedience by proceedings for contempt, as in the  
11 6 case of disobedience of the requirements of a subpoena issued  
11 7 by such court or a refusal to testify before such court.

11 8 8. Any proceeding in any court affecting a determination  
11 9 of the public body shall have priority in hearing and  
11 10 determination over all other civil proceedings pending in the  
11 11 court, except election contests.

11 12 Sec. 11. NEW SECTION. 91F.10 APPLICABILITY == INJUNCTIVE  
11 13 RELIEF == CONTRACT VOID.

11 14 1. The provisions of this chapter shall not be applicable  
11 15 to federal construction projects that require a prevailing  
11 16 wage determination by the United States department of labor.

11 17 2. The labor commissioner, represented by the attorney  
11 18 general, may sue for injunctive relief against the awarding of  
11 19 any contract or the continuation of work under any contract  
11 20 for public works when the requirements of this chapter have  
11 21 not been met. Failure to meet the prevailing wage  
11 22 requirements of this chapter shall void any contract for a  
11 23 public works project. If the contract is void, as provided in

11 24 this section, the contractor is prohibited from recovering any  
11 25 damages for the voiding of the contract and shall be limited  
11 26 to a claim for amounts actually paid for labor and materials  
11 27 supplied to the public body. If objections to a determination  
11 28 of the prevailing rate of wages or a related court action is  
11 29 pending, the public body shall not continue work on the  
11 30 project unless sufficient funds are available to pay increased  
11 31 wages if such wages are finally determined or unless the labor  
11 32 commissioner certifies such determination of the prevailing  
11 33 rate of wages as correct.

11 34 3. Any laborer, worker, or mechanic employed by the  
12 35 contractor or subcontractor whose services are paid for at a  
12 1 sum less than the stipulated rates for work done under the  
12 2 public works contract shall have a right of action for  
12 3 whatever difference there may be between the amount paid and  
12 4 the rates provided by the contract together with costs,  
12 5 including reasonable attorney fees and court costs. The  
12 6 contractor or subcontractor shall also be liable to the labor  
12 7 commissioner for twenty percent of such underpayments and  
12 8 shall be additionally liable to the laborer, worker, or  
12 9 mechanic for punitive damages in the amount of two percent of  
12 10 the amount of such penalty to the state for underpayments for  
12 11 each month following the date of payment during which such  
12 12 underpayments remain unpaid.

12 13 4. The labor commissioner shall also have a right of  
12 14 action on behalf of any individual who has a right of action  
12 15 under this section. Any action brought to recover the  
12 16 difference between the amount paid and the rates provided by  
12 17 the contract together with costs shall be deemed to be a suit  
12 18 for wages, and any and all judgments entered shall have the  
12 19 same force and effect as other judgments for wages. At the  
12 20 request of any laborer, worker, or mechanic employed by the  
12 21 contractor or subcontractor who is paid less than the  
12 22 prevailing rate of wages required under this chapter, the  
12 23 labor commissioner may take an assignment of such wage claim  
12 24 in trust for the assigning laborer, worker, or mechanic and  
12 25 may bring any legal action necessary to collect such claim,  
12 26 and the contractor or subcontractor shall be required to pay  
12 27 the costs incurred in collecting the claim.

12 28 Sec. 12. NEW SECTION. 91F.11 PUBLICATION OF VIOLATIONS  
12 29 REQUIRED.

12 30 1. The labor commissioner shall determine the contractors  
12 31 and subcontractors who, on two or more separate occasions,  
12 32 have violated the provisions of this chapter and shall notify  
12 33 the contractors and subcontractors of this determination. A  
12 34 contractor or subcontractor so notified shall have ten working  
12 35 days from the date of receipt of the determination to request  
13 1 a hearing by the labor commissioner on the alleged violations.  
13 2 Failure to respond within the time specified shall result in  
13 3 automatic and immediate publication as provided under  
13 4 subsection 2.

13 5 2. The labor commissioner shall publish on the division of  
13 6 labor services' official web site no less often than once each  
13 7 quarter a list of contractors and subcontractors found to have  
13 8 disregarded their obligations to employees under this chapter  
13 9 as determined under subsection 1. If the contractor or  
13 10 subcontractor requests a hearing on the alleged violations,  
13 11 the labor commissioner shall set a hearing on the alleged  
13 12 violations in accordance with chapter 17A. No contract for a  
13 13 public works project shall be awarded to a contractor or  
13 14 subcontractor whose name is on the web site pursuant to this  
13 15 section, or to any firm, corporation, partnership, or  
13 16 association in which such contractor or subcontractor has an  
13 17 interest until two years have elapsed from the date of  
13 18 publication on the web page of the name of the contractor or  
13 19 subcontractor.

13 20 Sec. 13. NEW SECTION. 91F.12 DISCHARGE OR DISCIPLINE OF  
13 21 "WHISTLE BLOWERS" PROHIBITED.

13 22 1. No person shall discharge, discipline, or in any other  
13 23 way discriminate against, or cause to be discharged,  
13 24 disciplined, or discriminated against, any employee or any  
13 25 authorized representative of employees by reason of the fact  
13 26 that the employee or representative has filed, instituted, or  
13 27 caused to be filed or instituted, any proceeding under this  
13 28 chapter, or has testified or is about to testify in any  
13 29 proceeding resulting from the administration or enforcement of  
13 30 this chapter, or offers any evidence of any violation of this  
13 31 chapter.

13 32 2. Any employee or a representative of employees who  
13 33 believes that the employee has been discharged, disciplined,  
13 34 or otherwise discriminated against by any person in violation

13 35 of this section may, within thirty days after the alleged  
14 1 violation occurs, apply to the labor commissioner for a review  
14 2 of the discharge, discipline, or alleged discrimination. A  
14 3 copy of the application shall be sent to the person who  
14 4 allegedly committed the violation, who shall be the  
14 5 respondent. Upon receipt of an application, the labor  
14 6 commissioner shall cause such investigation to be made as the  
14 7 labor commissioner deems appropriate. The investigation shall  
14 8 provide an opportunity for a public hearing at the request of  
14 9 any party to the review to enable the parties to present  
14 10 information relating to the alleged violation. If the labor  
14 11 commissioner finds that a violation occurred, the labor  
14 12 commissioner shall issue a decision incorporating the labor  
14 13 commissioner's findings and requiring the party committing the  
14 14 violation to take affirmative action to abate the violation as  
14 15 the labor commissioner deems appropriate, including but not  
14 16 limited to the rehiring or reinstatement of the employee to  
14 17 the employee's former position and compensating the employee  
14 18 for the time the employee was unemployed. If the labor  
14 19 commissioner finds that no violation occurred, the labor  
14 20 commissioner shall issue an order denying the application. An  
14 21 order issued by the labor commissioner under this section  
14 22 shall be subject to judicial review under chapter 17A.

14 23 Sec. 14. NEW SECTION. 91F.13 SEVERABILITY.

14 24 If any portion of this chapter is for any reason held to be  
14 25 invalid, unlawful, or unconstitutional, the determination  
14 26 shall not affect the validity of the remaining provisions of  
14 27 this chapter or any part of this chapter.

14 28 EXPLANATION

14 29 This bill creates the prevailing wage Act and establishes  
14 30 state policy that a wage of not less than the general  
14 31 prevailing hourly rate paid for work of a similar character in  
14 32 the locality in which the work is performed shall be paid to  
14 33 all laborers, workers, and mechanics employed by or on behalf  
14 34 of any and all public bodies engaged in the construction of  
14 35 public works. The labor commissioner and the division of  
15 1 labor services are responsible for the administration of the  
15 2 Act.

15 3 DEFINITIONS == The bill defines "public body" as the state  
15 4 or any officer, board, or commission of the state or any  
15 5 political subdivision or department of a political  
15 6 subdivision, or any institution supported in whole or in part  
15 7 by public funds, and includes every county, city, township,  
15 8 school corporation, municipal corporation, commission,  
15 9 irrigation, utility, reclamation, improvement, or other  
15 10 district, and every other political subdivision, district, or  
15 11 municipality of the state. The bill defines "public works" as  
15 12 all fixed works constructed by any public body, other than  
15 13 work done directly by any public utility company, whether or  
15 14 not constructed under public supervision or direction, or paid  
15 15 for wholly or in part out of public funds. The term "general  
15 16 prevailing rate of hourly wages" means the hourly cash wages,  
15 17 plus benefits, paid generally, in the county in which the work  
15 18 is being performed, to employees engaged in work of a similar  
15 19 character on public works.

15 20 PREVAILING WAGE REQUIREMENTS AND AUTHORIZATIONS == The bill  
15 21 directs a public body to annually determine the prevailing  
15 22 wage rate in its area, and whenever awarding any contract for  
15 23 public works or performing the work itself, to either  
15 24 determine the prevailing rate of wages in the area itself or  
15 25 to notify the labor commissioner in writing that it desires  
15 26 that the labor commissioner make the determination. The  
15 27 public body must stipulate in any such contract that not less  
15 28 than the prevailing rate of wages as determined by the public  
15 29 body, the labor commissioner, or the court on review shall be  
15 30 paid to all laborers, workers, and mechanics performing work  
15 31 under the contract. If the labor commissioner revises the  
15 32 prevailing rate of wages to be paid by the public body, the  
15 33 public body must notify the contractor and each subcontractor  
15 34 of the revised rate. Contractor's bonds must guarantee the  
15 35 faithful performance of the prevailing wage clause.

16 1 All bid specifications must list the specified rates to all  
16 2 laborers, workers, and mechanics in the locality for each  
16 3 craft or type of worker or mechanic needed to execute the  
16 4 contract.

16 5 The contractor must post, at an easily accessible location  
16 6 on the project site, the prevailing wage rates for each craft  
16 7 or type of worker or mechanic.

16 8 Nothing in the Code chapter creating the Act shall be  
16 9 construed to prohibit a higher payment to any laborer, worker,  
16 10 or mechanic employed on any public work or to limit the hours

16 11 of work which may be performed by any person in any particular  
16 12 period of time.

16 13 RECORDS MAINTAINED == The contractor and each subcontractor  
16 14 must for three years maintain and keep records that show the  
16 15 actual hourly wages paid and the hours worked each day by each  
16 16 employee on the public works project. The record must be open  
16 17 at all reasonable hours to the inspection of the public body,  
16 18 its officers and agents, and to the labor commissioner or the  
16 19 labor commissioner's designee.

16 20 PENALTY AND ENFORCEMENT == The bill makes it a serious  
16 21 misdemeanor to willfully violate the Code chapter, and  
16 22 requires the attorney general to assist the labor commissioner  
16 23 in enforcing the Code chapter, though the labor commissioner  
16 24 may also commence legal proceedings in district court to  
16 25 enforce the Code chapter. The county attorney, at the request  
16 26 of the attorney general, must appear and prosecute such action  
16 27 when brought in the county attorney's county.

16 28 POSTING AND PUBLICATION REQUIREMENTS == Each public body  
16 29 must publicly post the prevailing wage rates it determines  
16 30 annually, publish the prevailing wage rates in a newspaper of  
16 31 general circulation, mail a copy to persons who have filed  
16 32 their names and addresses requesting copies, and file a  
16 33 certified copy of its determination in the office of the  
16 34 secretary of state and with the labor commissioner. The labor  
16 35 commissioner is also directed to annually investigate and  
17 1 ascertain the prevailing rate of wages for each county in the  
17 2 state and must publish its findings on its official web site.  
17 3 The determinations submitted to the labor commissioner and the  
17 4 labor commissioner's findings are public records.

17 5 HEARINGS == The bill permits hearings to be applied for and  
17 6 conducted as provided in Code chapter 17A. If any person  
17 7 affected objects to a determination in writing to the public  
17 8 body stating the specific grounds of the objection, the public  
17 9 body must set a date for a hearing on the objection after  
17 10 giving written notice, stating the time and place of the  
17 11 hearing, to the objector at least 10 days before the date of  
17 12 the hearing. If the public body is other than an agency  
17 13 subject to Code chapter 17A, the presiding officer of the  
17 14 public body, or the presiding officer's authorized  
17 15 representative, is authorized to interview workers, administer  
17 16 oaths, take or cause to be taken the depositions of witnesses,  
17 17 certify to all official acts, and require by subpoena the  
17 18 attendance and testimony of witnesses, and the production of  
17 19 all books, records, and other evidence relative to the matter  
17 20 under investigation or hearing.

17 21 INJUNCTIVE RELIEF == The labor commissioner, represented by  
17 22 the attorney general, is empowered to sue for injunctive  
17 23 relief against the awarding of any contract or the  
17 24 continuation of work under any contract for public works at a  
17 25 time when the requirements of this Code chapter have not been  
17 26 met. Failure to meet the prevailing wage requirements voids  
17 27 any contract for a public works project. Any laborer, worker,  
17 28 or mechanic paid less than the stipulated rates has a right of  
17 29 action for the difference between the amount paid and the  
17 30 rates provided by the contract together with costs, including  
17 31 reasonable attorney fees and court costs. The contractor or  
17 32 subcontractor is liable to the labor commissioner for 20  
17 33 percent of such underpayments and to the laborer, worker, or  
17 34 mechanic for punitive damages.

17 35 PUBLICATION OF VIOLATIONS == The labor commissioner must  
18 1 determine, notify, and post on its web page the names of  
18 2 contractors or subcontractors who, on two or more separate  
18 3 occasions, have violated the provisions of the Code chapter.  
18 4 A contractor or subcontractor so notified has 10 working days  
18 5 to request a hearing on the alleged violations.

18 6 "WHISTLE BLOWER" PROHIBITIONS == The bill prohibits the  
18 7 discharging, disciplining, or any other discriminatory action  
18 8 against any employee or any authorized representative of  
18 9 employees for filing, instituting, or causing to be filed or  
18 10 instituted, any proceeding under the Code chapter, or for  
18 11 testifying in a proceeding or offering any evidence of any  
18 12 violation of the Code chapter. Anyone who believes they are  
18 13 the victim of any of these prohibited practices may apply to  
18 14 the labor commissioner for a review. If the labor  
18 15 commissioner finds that a violation occurred, the labor  
18 16 commissioner shall issue a decision incorporating the labor  
18 17 commissioner's findings and requiring the party committing the  
18 18 violation to take affirmative action to abate the violation.

18 19 SEVERABILITY == A determination that a portion of the Code  
18 20 chapter is invalid, unlawful, or unconstitutional shall not  
18 21 affect the validity of the remaining provisions of the Code



18 22 chapter.  
18 23     The bill may include a state mandate as defined in Code  
18 24 section 25B.3.  
18 25 LSB 2209SC 81  
18 26 kh:nh/sh/8